

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2014 APR -7 PM 4: 03

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

CHIEF CLERK'S OFFICE

April 7, 2014

Bridget C. Bohac, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: Application of Lake Cities Municipal Utility Authority for Approval of Impact
Fees in Denton County, Texas TCEQ Docket No. 2014-0084-DIS

Dear Ms. Bohac:

Attached for filing please find an original and seven copies of the Executive Director's
Response to Hearing Requests in the above referenced matter. Please feel free to
contact me at dinniah.tadema@tceq.texas.gov or (512) 239-0617 if you have any
questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dinniah C. Tadema".

Dinniah C. Tadema
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2014-0084-DIS

APPLICATION OF LAKE CITIES	§	2014 APR 7 PM 4:03	BEFORE THE
MUNICIPAL UTILITY	§		
AUTHORITY FOR APPROVAL OF	§	CHIEF CLERK'S OFFICE	TEXAS COMMISSION ON
IMPACT FEES IN DENTON	§		
COUNTY, TEXAS	§		ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files the Executive Director's Response to Hearing Requests concerning Lake Cities Municipal Utility Authority's (District's) application for approval to increase its water and sewer impact fees in Denton County, Texas. For the reasons set forth below, the ED recommends the Commission grant the hearing requests from Sharon S. Babb; Barbara Ruth Miller; Payne Victor Rucker, Jr.; Gayle Rumbeck; and Carl R. Stapp. The ED further recommends that the Commission not refer Robert Kouns' comment to the State Office of Administrative Hearings.

Attached for the Commission's consideration are the following documents:

Attachment A – Draft Order and Technical Summary
Attachment B – Map of the District Service Area

Copies were also provided to all parties.

I. BACKGROUND

The District is requesting Commission approval to increase its impact fee from \$1,619 to up to \$4,257 per equivalent single-family connection (ESFC)¹ for new connections to its water facilities, and from \$1,730 to up to \$3,415 per ESFC for new connections to its wastewater facilities.

The District provides retail water and wastewater services to customers within its certificated service area (CCN No. 10166 for water and 20060 for wastewater). The District was serving 4,969 water ESFCs and 4,782 wastewater ESFCs in the year 2012. In 1997, the Texas Natural Resource Conservation Commission approved an impact fee of up to \$1,619 per ESFC for new connections to its water facilities and up to \$1,730 per ESFC for new connections to its wastewater facilities.

The District has represented that revenue from the proposed impact fees will be used to reimburse the District for costs associated with water and wastewater system improvements. The District's application has been reviewed by staff in the TCEQ

¹ One residential ESFC is defined as the typical consumption by one single family household with a 5/8 inch water meter.

Utilities and Districts Section, Water Supply Division. The ED's current recommendation, based on the information available to the ED at this time, is for the Commission to approve the District's requested impact fee amounts for water and wastewater service. See Attachment A (January 6, 2014 Technical Memorandum).

II. PROCEDURAL HISTORY

On April 16, 2013, the Utilities and District Section received an application requesting approval of its water and wastewater impact fees. The District's application was declared administratively complete on April 23, 2013. Notice of the application was published in the Denton Record Chronicle (regularly published and generally circulated in Denton County), on August 28 and September 4, 2013. The chief clerk's office received the affidavit of mailing, evidencing the notice was mailed by first-class mail on September 4, 2013 to the landowners within the District's service areas. The comment period ended on October 4, 2013.

III. LEGAL BACKGROUND

A. Impact Fees

Chapter 395 of the Texas Local Government Code and Chapter 49 of the Texas Water Code allow Texas districts to assess an impact fee in a district if approved by the Commission. See Tex. Loc. Gov't Code § 395.080(b); Tex. Water Code § 49.212(d). The Commission reviews impact fee applications in accordance with Sections 293.171–176 of the Commission rules. See 30 Texas Administrative Code ("TAC") §§ 293.171–176.

An "impact fee" is a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. Tex. Loc. Gov't Code § 395.001(4); see also 30 TAC § 293.171(1). "New development" is defined as the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units. Tex. Loc. Gov't Code § 395.001(6).

A "capital improvement plan" is a plan that identifies capital improvements or facility expansions pursuant to which impact fees may be assessed. See 30 TAC § 293.171(2); see also Tex. Loc. Gov't Code § 395.001(2).

Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, stormwater, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers. 30 TAC § 293.171(3); see also Tex. Loc. Gov't Code § 395.001(1). Service area is defined as an area within or without the boundaries of a district to be served by the capital improvements specified in the capital

improvements plan. 30 TAC § 293.171(5); see Tex. Loc. Gov't Code § 395.001(9). The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvements plan. Id.

Notice of an impact fee application must be published and mailed as provided in section 293.173 of the Commission's rules, unless waived by the Executive Director. See 30 TAC § 293.173(c)(2). The Commission may act on an impact fee application without holding a public hearing if a public hearing is not requested by the Commission, the Executive Director, or an affected person in the manner prescribed by Commission rule during the 30 days following the final publication of notice of the impact fee application. 30 TAC § 293.173(d). If the Commission determines that a public hearing is necessary, the Chief Clerk shall advise all parties of the time and place of the hearing. Id.

If the Commission finds that a requested impact fee is reasonable, equitable and necessary as a mechanism for a district to finance improvements to serve the designated service area, the Commission shall approve the capital improvements plan and impact fee. 30 TAC § 293.174(a). The Commission may approve an impact fee amount that is different than the impact fee amount requested in the application for approval; however, in no event shall the Commission approve an impact fee amount higher than the impact fee amount contained in the notice required under 30 TAC § 293.173(b). Id.

B. Standard for Hearing Request

The District's application was declared administratively complete after September 1, 1999, and does not fall under any of the statutory provisions listed in section 55.250 of the Commission's rules; therefore, as provided in that rule section, the application is subject to Chapter 55, Subchapter G.

A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the Chief Clerk within the time period specified in the notice. 30 TAC § 55.251(b), (d). Additionally, a hearing request must substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.
30 TAC § 55.251(c)(1)–(4).

A request for a contested case hearing made by an affected person (see below) will be granted if the request:

- (A) complies with the requirements of § 55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment);
- (B) is timely filed with the chief clerk; and
- (C) is pursuant to a right to hearing authorized by law.

30 TAC § 55.255(b)(2).

An “affected person” is one with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC § 55.256(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* In evaluating whether a person requesting a hearing is an “affected person,” the Commission will weigh all relevant factors, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c).

IV. ANALYSIS OF HEARING REQUESTS

C. Whether the Requestors Complied With 30 TAC § 55.251(c)(1)–(4)

1. Ms. Sharon S. Babb’s Hearing Request

Sharon S. Babb filed a letter with the TCEQ Chief Clerk’s Office on September 25, 2013. Ms. Babb’s letter provided: 1) contact information; 2) a brief identification of her interest; and 3) requested a contested case hearing. The comment period ended on October 4, 2013; therefore her hearing request was timely filed. The Executive Director

concludes that Ms. Babb's hearing request substantially complies with 30 TAC § 55.251(c)(1)-(4).

2. Ms. Barbara Ruth Miller's Hearing Request

Barbara Ruth Miller filed a letter with the TCEQ Chief Clerk's Office on September 12, 2013. Ms. Miller's letter provided: 1) contact information; 2) a brief identification of her interest; and 3) requested a contested case hearing. The comment period ended on October 4, 2013; therefore her hearing request was timely filed. The Executive Director concludes that Ms. Miller's hearing request substantially complies with 30 TAC § 55.251(c)(1)-(4).

3. Mr. Payne Victor Rucker, Jr.'s Hearing Request

Payne Victor Rucker, Jr. filed an email with the TCEQ Chief Clerk's Office on September 12, 2013. Mr. Rucker's email provided: 1) contact information; 2) a brief identification of his interest; and 3) requested a contested case hearing. The comment period ended on October 4, 2013; therefore his hearing request was timely filed. The Executive Director concludes that Mr. Rucker's hearing request substantially complies with 30 TAC § 55.251(c)(1)-(4).

4. Ms. Gayle Rumbeck's Hearing Request

Gayle Rumbeck filed a letter with the TCEQ Chief Clerk's Office on September 27, 2013. Ms. Rumbeck's letter provided: 1) contact information; 2) a brief identification of her interest; and 3) requested a contested case hearing. The comment period ended on October 4, 2013; therefore her hearing request was timely filed. The Executive Director concludes that Ms. Rumbeck's hearing request substantially complies with 30 TAC § 55.251(c)(1)-(4).

5. Mr. Carl Stapp's Hearing Request

Carl R. Stapp filed a letter with the TCEQ Chief Clerk's Office on September 30, 2013. Mr. Stapp's letter provided: 1) contact information; 2) a brief identification of his interest; and 3) requested a contested case hearing. The comment period ended on October 4, 2013; therefore his hearing request was timely filed. The Executive Director concludes that Mr. Stapp's hearing request substantially complies with 30 TAC § 55.251(c)(1)-(4).

6. Mr. Robert Kouns' Comment Email

Robert Kouns submitted an email to the TCEQ Chief Clerk's Office on September 12, 2013. Mr. Kouns states that he owns an improved lot, does not request a hearing, and comments that the city provides water and sewer service. Since Mr. Kouns' email does not identify a justiciable interest nor request a contested case hearing, his email should be treated as a public comment. See 30 TAC § 55.251(c)(2), (c)(3) and (e).

D. Whether the Requestors Meet the Requirements of an Affected Person

1. Ms. Sharon S. Babb's Hearing Request

Sharon S. Babb claims to own a parcel of land within the District. Although she does not specifically provide a written statement explaining the location of her property in the District, it can be inferred from her receipt of the notice of the impact fee and the statements in her letter. She states that the impact fee would adversely affect her property because the property is not worth the amount of the proposed impact fee and would affect future sale or use of her property. The development of Ms. Babb's property within the District would be "new development" for purposes of Texas Local Government Code Section 395.001(6). Although Ms. Babb states that according to the Army Corps of Engineers "no permanent structures/or improvements can be erected on these lots which would need water or waste water services," Ms. Babb may use the property in a manner that would meet the definition of "new development" by subdividing the land or using the property in a way which would increase the number of service units. Therefore, the ED concludes that Ms. Babb owns property within the district that would be subject to the requested impact fee, and therefore has a personal justiciable interest related to a legal right affected by the application. See 30 TAC 55.256(a)(1).

Under 30 Texas Administrative Code Section 55.256(c): 1) Ms. Babb's claimed interest is protected by the law under which the application is being considered; 2) a reasonable relationship exists between her interest and the activity regulated; and 3) the imposition of the impact fee will likely impact Ms. Babb's use of her property. Here, the regulated activity is the imposition of the impact fee. For the Commission to grant the impact fee, it must be reasonable, equitable, and necessary as a mechanism for a district to finance improvements to serve the designated service area. 30 TAC § 293.174(a). Accordingly, Ms. Babb's claimed interest is one that is protected by the law under which the application is being considered. See 30 TAC § 55.256(c)(1). In addition, a reasonable relationship exists between Ms. Babb's interests in her property and the imposition of the impact fee. See 30 TAC § 55.256(c)(3). Finally, the imposition of the impact fee will likely impact the use of Ms. Babb's property. See 30 TAC § 55.256(c)(4) and (c)(5). Therefore, the ED recommends that the Commission find that Ms. Babb is an affected person and that her request for a contested case hearing be granted.

2. Ms. Barbara Ruth Miller's Hearing Request

Barbara Ruth Miller claims to own eight residential building lots within the District. Although she does not specifically provide a written statement explaining the location of her property in the District, it can be inferred from the statements in her letter. She states that she owns eight residential building lots in the Oak Lakes Subdivision and that the impact fee would adversely affect her property because the impact fee would affect future sale of her property. Ms. Miller states that her "hope was to build a house on one of these lots" which would be new construction and add to the number of service units. The development of Ms. Miller's property within the District

would be "new development" for purposes of Texas Local Government Code Section 395.001(6). Therefore, the ED concludes that Ms. Miller owns property within the district that would be subject to the requested impact fee; therefore, she has a personal justiciable interest related to a legal right affected by the application. See 30 TAC § 55.256(a)(1).

Under 30 Texas Administrative Code Section 55.256(c): 1) Ms. Miller's claimed interest is protected by the law under which the application is being considered; 2) a reasonable relationship exists between her interest and the activity regulated; and 3) the imposition of the impact fee will likely impact Ms. Miller's use of her property. Here, the regulated activity is the imposition of the impact fee. For the Commission to grant the impact fee, it must be reasonable, equitable, and necessary as a mechanism for a district to finance improvements to serve the designated service area. 30 TAC § 293.174(a). Accordingly, Ms. Miller's claimed interest is one that is protected by the law under which the application is being considered. See 30 TAC § 55.256(c)(1). In addition, a reasonable relationship exists between Ms. Miller's interests in her property and the imposition of the impact fee. See 30 TAC § 55.256(c)(3). Finally, the imposition of the impact fee will likely impact the use of Ms. Miller's property. See 30 TAC § 55.256(c)(4) and (c)(5). Therefore, the ED recommends that the Commission find that Ms. Miller is an affected person and that her request for a contested case hearing be granted.

3. Mr. Payne Victor Rucker, Jr.'s Hearing Request

Payne Victor Rucker, Jr. claims to own a lot within the District. Although he does not specifically provide a written statement explaining the location of his property in the District, it can be inferred that he owns undeveloped property in the District from his receipt of the impact fee notice and his statement in the hearing request that he inherited a lot from his father. The development of Mr. Rucker's property within the District would be "new development" for purposes of Texas Local Government Code Section 395.001(6). Although Mr. Rucker states that the property has a "core of engineer easement, so a home with a foundation cannot be constructed on this lot" Mr. Rucker may use the property in a manner that would meet the definition of "new development" by constructing a structure without a foundation or subdividing the land or using the property in a way which would increase the number of service units.

Under 30 Texas Administrative Code Section 55.256(c): 1) Mr. Rucker's claimed interest is protected by the law under which the application is being considered; 2) a reasonable relationship exists between his interest and the activity regulated; and 3) the imposition of the impact fee will likely impact Ms. Rucker's use of his property. Here, the regulated activity is the imposition of the impact fee. For the Commission to grant the impact fee, it must be reasonable, equitable, and necessary as a mechanism for a district to finance improvements to serve the designated service area. 30 TAC § 293.174(a). Accordingly, Mr. Rucker's claimed interest is one that is protected by the law under which the application is being considered. See 30 TAC § 55.256(c)(1). In addition, a reasonable relationship exists between Mr. Rucker's interests in his property and the imposition of the impact fee. See 30 TAC § 55.256(c)(3). Finally, the imposition

of the impact fee will likely impact the use of Mr. Rucker's property. See 30 TAC § 55.256(c)(4) and (c)(5). Therefore, the ED recommends that the Commission find that Mr. Rucker is an affected person and that his request for a contested case hearing be granted.

4. Ms. Gayle Rumbeck's Hearing Request

Ms. Rumbeck claims to own property within the District. Although she does not specifically provide a written statement explaining the location of her property in the District, it can be inferred from the statements in her letter. Specifically, Ms. Rumbeck states that "the current market value of [her] property is far less than the costs that [she] will incur for these capital improvements." If Ms. Rumbeck constructs or subdivides her property and increases the number of service units, this would be "new development" for purposes of Texas Local Government Code Section 395.001(6). Therefore, the ED concludes that Ms. Rumbeck owns property within the District that would be subject to the requested impact fee; therefore, she has a personal justiciable interest related to a legal right affected by the application. See 30 TAC § 55.256(a)(1).

Under 30 Texas Administrative Code Section 55.256(c): 1) Ms. Rumbeck's claimed interest is protected by the law under which the application is being considered; 2) a reasonable relationship exists between her interest and the activity regulated; and 3) the imposition of the impact fee will likely impact Ms. Rumbeck's use of her property. Here, the regulated activity is the imposition of the impact fee. For the Commission to grant the impact fee, it must be reasonable, equitable, and necessary as a mechanism for a district to finance improvements to serve the designated service area. 30 TAC § 293.174(a). Accordingly, Ms. Rumbeck's claimed interest is one that is protected by the law under which the application is being considered. See 30 TAC § 55.256(c)(1). In addition, a reasonable relationship exists between Ms. Rumbeck's interests in her property and the imposition of the impact fee. See 30 TAC § 55.256(c)(3). Finally, the imposition of the impact fee will likely impact the use of Ms. Rumbeck's property. See 30 TAC § 55.256(c)(4) and (c)(5). Therefore, the ED recommends that the Commission find that Ms. Rumbeck is an affected person and that her request for a contested case hearing be granted.

5. Mr. Carl Stapp's Hearing Request

Mr. Stapp claims to own property at 510 Ridgewood, Lake Dallas, Texas within the District. If Mr. Stapp constructs on or subdivides his property and increases the number of service units, this would be "new development" for purposes of Texas Local Government Code Section 395.001(6). Therefore, the ED concludes that Mr. Stapp owns property within the district that would be subject to the requested impact fee; therefore, he has a personal justiciable interest related to a legal right affected by the application. See 30 TAC 55.256(a)(1).

Under 30 Texas Administrative Code Section 55.256(c): 1) Mr. Stapp's claimed interest is protected by the law under which the application is being considered; 2) a reasonable relationship exists between his interest and the activity regulated; and 3) the

imposition of the impact fee will likely impact Mr. Stapp's use of his property. Here, the regulated activity is the imposition of the impact fee. For the Commission to grant the impact fee, it must be reasonable, equitable, and necessary as a mechanism for a district to finance improvements to serve the designated service area. 30 TAC § 293.174(a). Accordingly, Mr. Stapp's claimed interest is one that is protected by the law under which the application is being considered. See 30 TAC § 55.256(c)(1). In addition, a reasonable relationship exists between Mr. Stapp's interests in his property and the imposition of the impact fee. See 30 TAC § 55.256(c)(3). Finally, the imposition of the impact fee will likely impact the use of Mr. Stapp's property. See 30 TAC § 55.256(c)(4) and (c)(5). Therefore, the ED recommends that the Commission find that Mr. Stapp is an affected person and that his request for a contested case hearing be granted.

6. *Mr. Robert Kouns' Comment Email*

Since Mr. Kouns' email did not identify a justiciable interest nor request a contested case hearing, his email should be treated as a public comment. See 30 TAC § 55.251(c) and (e). Therefore, the ED does not recommend referring his comment to hearing.

V. EXECUTIVE DIRECTOR'S RECOMMENDATION

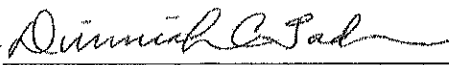
The Executive Director recommends that the Commission grant Ms. Babbs, Ms. Miller, Mr. Rucker, Ms. Rumbeck, and Mr. Stapp's hearing requests and refer them to hearing. The Executive Director recommends that the Commission not refer Mr. Kouns' comment to hearing.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 

Dinniah C. Tadema
Staff Attorney
Environmental Law Division
SBN: 24050400
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0617
Fax: (512) 239-0606

Attachment A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER AUTHORIZING LAKE CITIES MUNICIPAL UTILITY AUTHORITY OF DENTON COUNTY TO IMPOSE AN IMPACT FEE

An application by Lake Cities Municipal Utility Authority of Denton County (Authority) was presented to the Executive Director of the Texas Commission on Environmental Quality (Commission or TCEQ) for consideration of approval of an impact fee pursuant to TEX. WATER CODE § 5.122, TEX. LOCAL GOVT. CODE § 395.080, and TCEQ rules. Based on the findings of fact and conclusions of law set out herein, the TCEQ finds that the application should be APPROVED.

FINDINGS OF FACT

1. On April 16, 2013, the District filed an application for the approval of an impact fee in the amount up to \$4,257 per equivalent single-family connection (ESFC) for new connections to its water facilities, and up to \$3,415 per ESFC for new connections to its wastewater facilities.
2. The application and accompanying documents have been examined. A memorandum was prepared on the application dated January 6, 2014, copy of which is attached and made a part hereof.
3. Notice of the application was published in *the Denton Record Chronicle* (regularly published and generally circulated in Denton County) on August 28 and September 4, 2013. Notice was mailed by first-class mail on September 4, 2013 to the landowners within Lake Cities Municipal Utility service areas.

CONCLUSIONS OF LAW

1. The TCEQ has jurisdiction to consider and grant this application pursuant to TEX. LOCAL GOVT. CODE § 395.080.
2. Notice of the application was proper.
3. The requested impact fee in the amount of up to \$4,257 per ESFC for new connections to its water facilities, and up to \$3,415 per ESFC for new connections to its wastewater facilities is reasonable, equitable, and necessary as a mechanism to finance improvements to serve the designated service area shown in Exhibit "A".

4. The purposes stated in the application are lawful, and the application form is proper and legal. Statutory and regulatory requirements have been met in accordance with TEX. LOCAL GOVT. CODE § 395.080 and 30 TEX. ADMIN. CODE §§ 293.171-176.

NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the request by Lake Cities Municipal Utility Authority of Denton County to adopt and impose a water system impact fee of up to \$4,257 per ESFC for new connections to its water facilities, and up to \$3,415 per ESFC for new connections to its wastewater facilities is approved in accordance with TEX. LOCAL GOVT. CODE § 395.080. The Authority is advised that any increase in the amount of the approved impact fees will require TCEQ approval. The Authority is advised that all funds collected through the levy of the impact fees shall be deposited in interest-bearing accounts and, combined with the interest earned, shall be utilized for repayment of debt and/or construction of improvements as shown in the 2012 capital improvements plan. The Authority is advised that the records of the accounts into which impact fee revenue is deposited shall be open for public inspection and copying during normal business hours.

The Chief Clerk of the TCEQ is directed to forward the District a copy of this Order.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: DRAFT

For the Commission

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: *ABT* Tammy Benter, Manager
1/1/2014 Utilities and Districts Section

Date: January 6, 2014

Thru: *ABT* Tom Glab, P.E., Leader
1/1/2014 Districts Bond Team

From: Prabin Basnet
Districts Bond Team

Subject: Lake Cities Municipal Utility Authority of Denton County; Application for Approval to Levy Impact Fees; Pursuant to Local Government Code Chapter 395. TCEQ Internal Control No. D-04162013-019
CN: 600452700 RN: 102675352

A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received an application from Lake Cities Municipal Utility Authority of Denton County (LCMUA) requesting approval to increase its impact fee from \$1,619 to up to \$4,257 per equivalent single-family connection (ESFC) for new connections to its water facilities, and \$1,730 to up to \$3,415 per ESFC for new connections to its wastewater facilities.

LCMUA provides retail water and wastewater services to the customers within its certificated service area (CCN No. 10166 for water and 20060 for wastewater). The District was serving 4,969 water ESFCs and 4,782 wastewater ESFCs in the year 2012.

Notice Requirements

Proper notice of the application was published in the Denton Record Chronicle (regularly published and generally circulated in Denton County), on August 28 and September 4, 2013. The chief clerk's office has received the affidavit of mailing, evidencing the notice was mailed by first-class mail on September 4, 2013 to the landowners within LCMUA service areas. Accordingly, the notice requirements of 30 Texas Administrative Code (TAC) Section 293.173 have been satisfied.

B. CAPITAL IMPROVEMENTS PLAN / IMPACT FEE CALCULATIONS

The District's engineer submitted a 2012 water and wastewater impact fee study (capital improvement plan (CIP) that describes existing facilities, the proposed improvements, and the future connections on which the new impact fees amount are based.

The District's existing water supply facilities are as follows:

<u>Facility</u>	<u>Criteria⁽¹⁾</u>	<u>Existing Capacity</u>	<u>Proposed Capacity</u>	<u>Total Capacity (ESFC)</u>
Purchased water	0.6 gpm/ESFC	2,635 gpm	-	2,635 gpm (4,392 ESFCs)
Wells	0.6 gpm/ESFC	790 gpm	-	790 gpm (1,317 ESFCs)
Ground Storage	200 gal/ESFC	1,175,000 gal	500,000 gal	1,675,000 gal (17,375 ESFCs)
Elevated Storage	100 gal/ESFC	800,000 gal	1,000,000 gal	1,800,000 gal (18,000 ESFCs)
Booster Pumps	2 gpm/ESFC or 1,000 gpm max.	9,900 gpm	3,000 gpm	12,900 gpm (6,450 ESFCs)

Note: (1) Based on 30 TAC Section 290.45 criteria.

Wastewater treatment capacity for the District is provided by the Upper Trinity Regional Water District pursuant to the contract dated June 26, 1995, as amended on November 6, 1997 and October 17, 2005. The District's existing wastewater facilities includes series of lift stations, force main, and collection lines.

The specific improvements and portion of estimated costs related to new water connections as detailed in the CIP are as follows:

<u>Project Component</u>	<u>Construction Costs for New Development ⁽¹⁾</u>	<u>Projected New Connections (ESFCs)</u>	<u>Impact Fee per ESFC</u>
1. Elevated Storage Tank – 1 MGD	\$ 1,383,768		
2. FM 2181 Pump Station	307,504		
3. I35E connections and PRVs	92,251		
4. North pump Station	463,100		
5. Waterline Improvements			
6. Harbor Lane – 12 Inch (South)	394,375		
7. Harbor Lane – 16 Inch (North)	313,193		
8. Lakeview Drive – 12 Inch (North)	252,923		
9. Hickory Creek Road – 12 Inch (East)	238,008		
10. Point Vista Extension – 16 Inch (East)	328,799		
11. Point Vista Extension – 12 Inch (West)	262,148		
12. Steeplechase Addition – 12 Inch	424,510		
13. Turbeville Road Extension – 12 & 16 Inch	339,485		
14. Point Vista Loop – 12 Inch	395,912		
15. Ronald Regan Extension – 12 Inch	389,762		
16. Hickory Creek Road – 12 Inch (West)	608,009		
17. Hickory Creek Road Connector – 12 Inch	487,702		

18. North Garza Road -- 12 Inch	108,395		
19. Smokey Lane -- 12 Inch	123,155		
20. West 6 th Street -- 12 Inch	256,765		
21. Howard Drive -- 12 inch	201,031		
22. Main Street -- 12 Inch	174,047		
23. Lakeview Drive -- 12 Inch (South)	433,272		
24. Hickory Hills Blvd. -- 12 Inch	174,355		
25. Miscellaneous Development Participation	25,000		
Total	\$ 8,177,469	1,921	\$ 4,257⁽²⁾

Notes:

- (1) Represents portion of estimated costs applicable to new ESFCs created in the next 10 years of projected growth.
- (2) The proposed water impact fee is calculated in accordance with Local Government Code Section 395.015(b) by taking \$8,177,469.00 (the cost of the portion of the capital improvements attributable to the projected new service units over the next ten years) and dividing by 1,921 (the projected number of new service units over the next ten years).

The specific improvements and portion of estimated costs related to new wastewater connections as detailed in the CIP are as follows:

<u>Project Component</u>	<u>Construction Costs for New Development ⁽¹⁾</u>	<u>Projected New Connections (ESFCs)</u>	<u>Impact Fee per ESFC</u>
1. Lift Station No. 1 Reconstruction	\$ 441,266		
2. Lakeside Interceptor Line	699,570		
3. Lift Station No. 7 and Force Main	1,480,710		
4. Shady Shores Road Wastewater Line (Phase I South)	265,914		
5. Shady Shores Road Wastewater Line (Phase II North)	441,653		
6. Carlisle Street Wastewater Line	385,148		
7. Main Street Wastewater Line	520,835		
8. Kingswood to Lift Station No. 5 Wastewater Line	373,617		
9. Hickory Creek/McDonalds Lift Station	823,879		
10. Hickory Creek South Interceptor Line	871,773		
11. Miscellaneous Development Participation	25,000		
Total	\$ 6,329,365	1,853	\$ 3,416⁽²⁾

Notes:

- (1) Represents portion of estimated costs applicable to new ESFCs created in the next 10 years of projected growth.
- (2) The proposed wastewater impact fee is calculated in accordance with Local Government Code Section 395.015(b) by taking \$6,329,365.00 (the cost of the portion of the capital improvements attributable to the projected new service units over the next ten years) and dividing by 1,853 (the projected number of new service units over the next ten years).

C. FEASIBILITY UPDATE

The LCMUA has authorization to levy taxes, but does not currently levy ad valorem tax. Revenue from the projected/proposed \$4,257 per ESFC (for water) and \$3,415 per ESFC (for wastewater) impact fees will be used to reimburse the District for costs associated with water and wastewater system improvements.

D. CONCLUSIONS

1. Based on a review of the application and supporting documents, the proposed water impact fee of \$4,257 per ESFC and wastewater impact fee of \$3,415 per ESFC appears to be within the limits allowed by applicable statutes and TCEQ rules.
2. The recommendations are made under authority delegated by the Executive Director of the TCEQ.

E. RECOMMENDATIONS

1. Approve an impact fee of up to \$4,257 per ESFC for water service and up to \$3,415 per ESFC for wastewater service within the LCMUA boundaries, as identified on the attached service area map.
2. Advise the District that any increase in the amount of the approved impact fee will require TCEQ approval.
3. Upon TCEQ approval of the impact fee, advise the District that:
 - a. all funds collected through the levy of the impact fee shall be deposited in interest-bearing accounts and, combined with the interest earned, shall be utilized for repayment of debt and/or construction of improvements, as indicated in the 2012 capital improvements plan; and
 - b. the records of the accounts into which impact fee revenue is deposited shall be open for public inspection and copying during normal business hours.

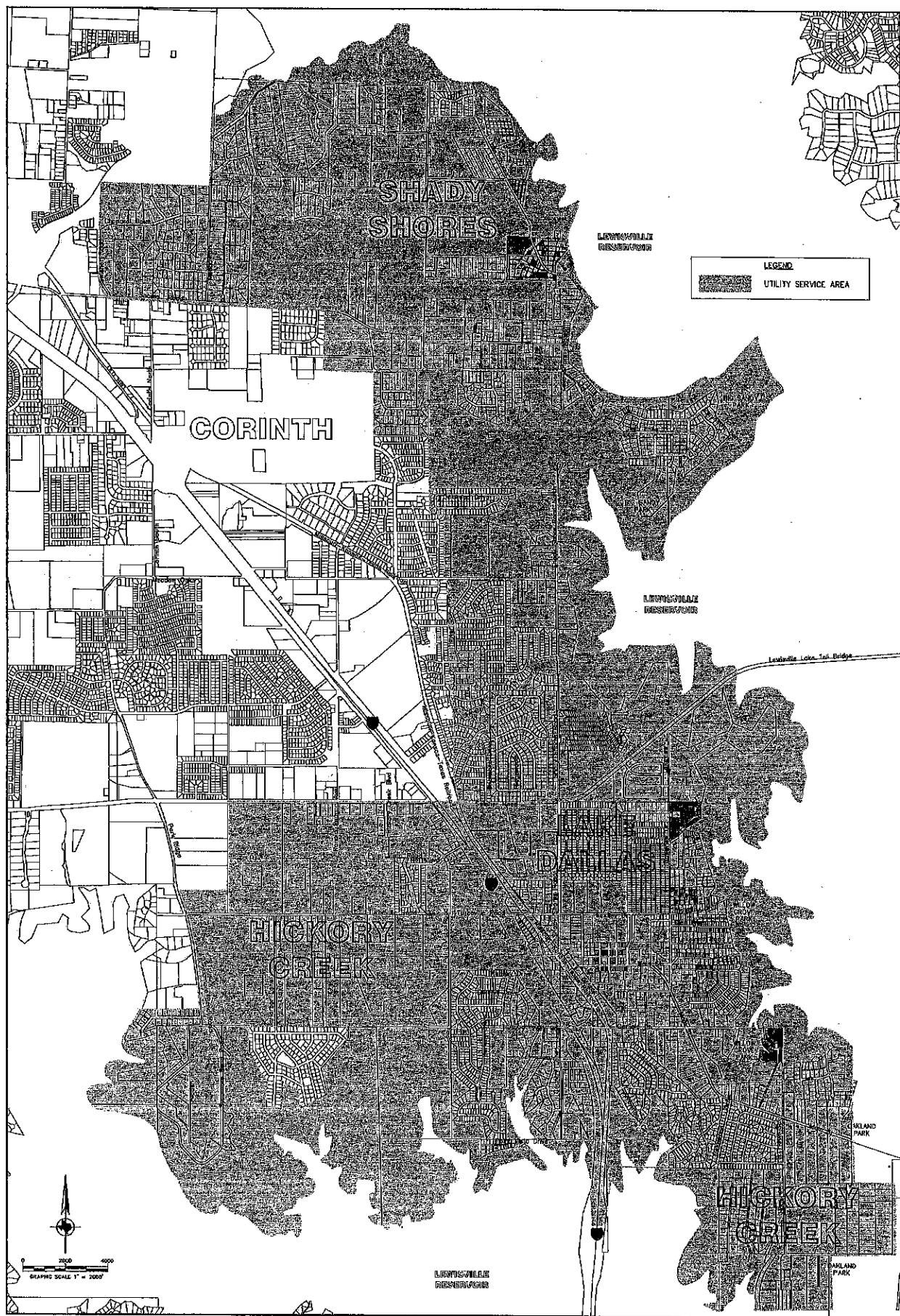
F. ADDITIONAL INFORMATION

The applicant's professional representatives are:

Attorney: Ms. Amber Slayton – Lafferty & Slayton PLLC
Engineer: Mr. Mike Anderson, P.E. – Belcheff & Associates Inc.
Mr. Cecil Carter – Lake Cities Municipal Utility Authority of Denton County

Attachment: Service Area Map

Exhibit A – Lake Cities Municipal Utility Authority Service Area Map



BOARD OF DIRECTORS & ADMINISTRATION

OECIL CARTER — PRESIDENT
 RAYMOND DICKEY — VICE PRESIDENT
 NORMA BARKER — SECRETARY
 SAMMIE SHIELD — DIRECTOR
 CHRIS HOPPE — DIRECTOR
 MIKE FAIRFIELD — GENERAL MANAGER
 JEFF KNIGHT — PROJECT MANAGER

Lake Cities
 MUNICIPAL UTILITY AUTHORITY



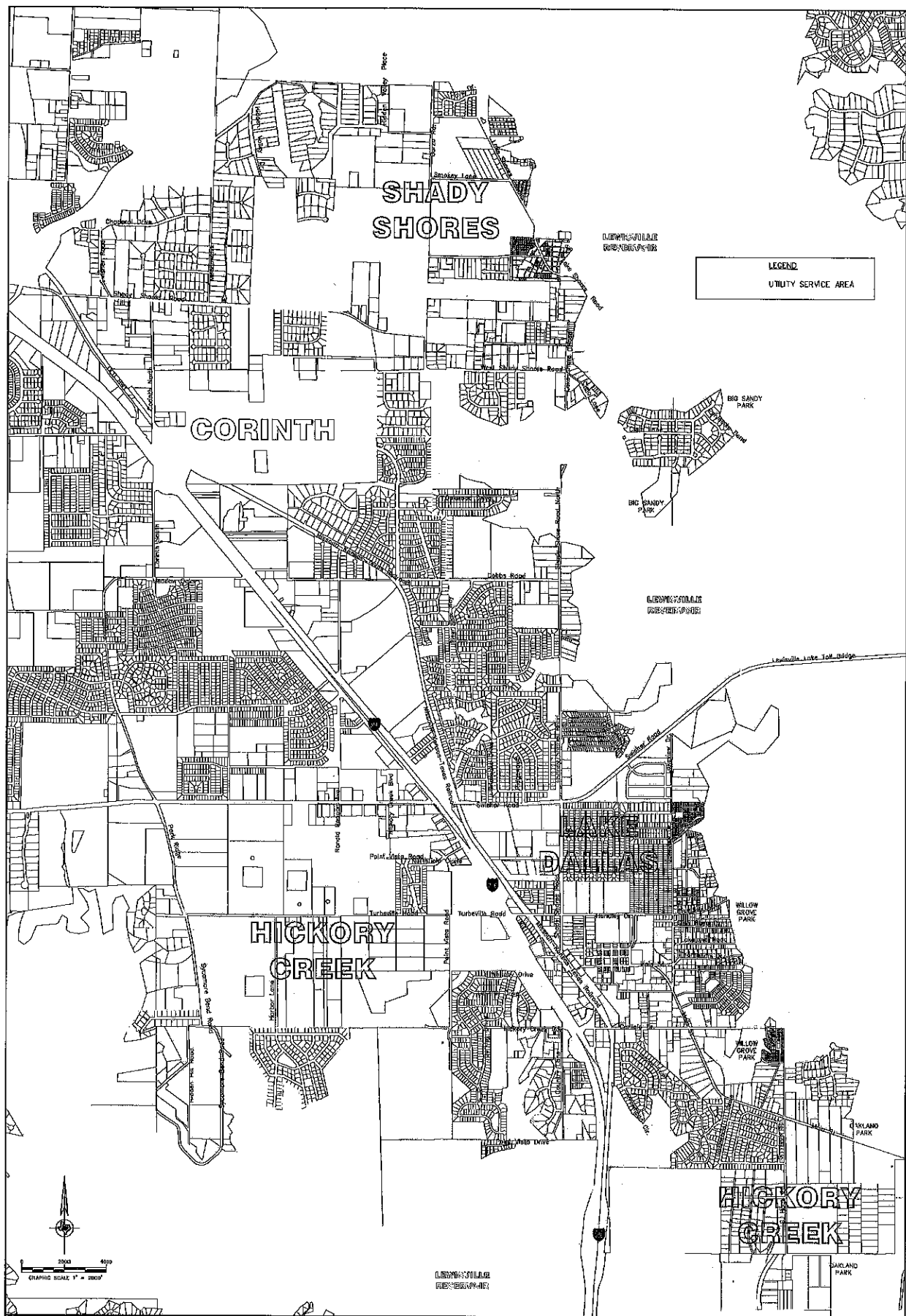
LCMUA
 UTILITY SERVICE AREA MAP
 (October 18, 2012)



Belcheff & Associates, Inc.

Licensed Engineering and Surveying
 10000 Highway 100, Suite 100
 Lake City, TN 37901

Attachment B



BOARD OF DIRECTORS & ADMINISTRATION

CECIL CARTER - PRESIDENT
 RAYMOND DICKEY - VICE PRESIDENT
 NORMA BARKER - SECRETARY
 SAMMIE SHIELD - DIRECTOR
 CHRIS HOPPE - DIRECTOR

MIKE FAIRFIELD - GENERAL MANAGER
 JEFF KNIGHT - PROJECT MANAGER

Lake Cities
 MUNICIPAL UTILITY AUTHORITY



LCMUA
 UTILITY SERVICE AREA MAP
 (October 19, 2012)



Belcheff & Associates, Inc.
 Multiple Engineering and Surveying

301 South Main Street, Suite 200
 Springdale, AR 72762

Phone: (479) 751-1111
 Fax: (479) 751-1112
 Web: www.belcheff.com

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2014, the "Executive Director's Response to Hearing Requests" was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas was delivered via electronic mail, facsimile, hand delivery, interagency mail, or U.S. Mail to all persons on the attached mailing list



Dinniah Tadema, Staff Attorney
Environmental Law Division
State Bar No. 24050400

Mailing List
Lake Cities Municipal Utility Authority
Docket No. 2014-0084-DIS; Internal Control No. D-04162013-019

FOR THE APPLICANT

Amber Slayton
Lafferty Law Firm, PLLC
3100 Independence Parkway
PMB 239, Ste. 311
Plano, Texas 75075
972.905.3812
972.905.3811 (Fax)

FOR SMALL BUSINESS AND ENVIRONMENTAL ASSISTANCE:

via electronic mail:
Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance Division, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
512.239.4000
512.239.5678 (Fax)
brian.christian@tceq.texas.gov

FOR THE CHIEF CLERK:

Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC 105
P. O. Box 13087
Austin, Texas 78711-3087
512.239.3300
512.239.3311 (Fax)
Bridget.c.bohac@tceq.texas.us

FOR THE PUBLIC INTEREST COUNSEL:

via electronic mail:
Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512.239.6363
512.239.6377 (Fax)
blas.coy@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION:

via electronic mail:
Mr. Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
512.239.4010
512.239.4015 (Fax)
Kyle.lucas@tceq.texas.gov

Requestor(s)

Sharon S. Babb
941 Harmony Circle
Weatherford, Texas 76087

Barbara Ruth Miller
404 West Shady Oak Circle
Shady Shores, Texas 76208

Payne Victor Rucker, Jr.
1417 Santa Fe Trail
Carrollton, Texas 75007

Gayle Rumbeck
2326 Chadwick Lane
Garland, Texas 75044

Carl R. Stapp
2954 Rambling Drive
Dallas, Texas 75228

Interested Person(s)

Mr. Robert Kouns
8416 Doreen Avenue
Fort Worth, Texas 76116

